

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF ALABAMA  
SOUTHERN DIVISION

JERRY NILES FIRESTONE,	)	
	)	
Plaintiff,	)	
	)	
v.	)	CIVIL ACTION NO. 09-0719-KD-N
	)	
RICHARD C. GIBSON, et al.,	)	
	)	
Defendants.	)	

ORDER

On April 5, 2010, the court issued a scheduling order (doc. 16); because the parties disagreed whether the action could be tried by a jury, the court allowed both parties to file briefs on this issue no later than April 16, 2010, with a provision for replies thereafter. However, only the plaintiff filed a brief on this issue; defendant is thus deemed to have abandoned this issue.

Plaintiff's brief cites binding precedent in support of its position. Harrison v. Flota Mercante Grancolombiana, S.A., 577 F.2d 968 (5<sup>th</sup> Cir. 1978)<sup>1</sup>; *see* St. Paul Fire and Marine Ins. Co. v. Lago Canyon, Inc., 561 F.3d 1181, 1184-85 (11<sup>th</sup> Cir. 2009)(recognizing Harrison as binding precedent in this Circuit). It thus appears clear that defendant is not entitled to make a jury demand in this maritime action.

The original scheduling order included a provision that the action would be tried during the month of January 2011 without a jury, but noted the dispute between the parties. As this action will be tried without a jury, there is no need to amend that order at this time.

Done this the 19<sup>th</sup> day of April, 2010.

/s/ Katherine P. Nelson  
UNITED STATES MAGISTRATE JUDGE

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<sup>1</sup> The Eleventh Circuit adopted as binding precedent all Fifth Circuit decisions prior to October 1, 1981. *Bonner v. City of Prichard*, 661 F.2d 1206, 1209 (11<sup>th</sup> Cir. 1981)(en banc).